

ONE HUNDRED THIRD LEGISLATURE - FIRST SESSION - 2013
COMMITTEE STATEMENT
LB205

Hearing Date: Tuesday March 05, 2013
Committee On: Banking, Commerce and Insurance
Introducer: Schumacher
One Liner: Change provisions relating to application of the Securities Act of Nebraska

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Campbell, Carlson, Christensen, Crawford, Gloor, Howard, Pirsch, Schumacher

Nay:

Absent:

Present Not Voting:

Proponents:

Senator Paul Schumacher
John Munn

Representing:

Introducer
NE Department of Banking and Finance

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB205 (Schumacher) would add a new section to the Securities Act of Nebraska to provide that the act shall not apply to certain smaller offers or sales of securities as specified in this section.

The bill would provide the exemption in the case of an offer or sale in which:

- (a) the proceeds in any three-year period do not exceed \$250,000;
- (b) there is no fraud or criminal theft by deception in connection with the sale or offer;
- (c) persons holding the ownership or beneficial interest in the issuer or the offer or sale have never been disqualified from issuing securities pursuant to the Securities Act of Nebraska, including this section, or any similar act of any other state;
- (d) the Director of Banking and Finance is notified of the issuer, all persons holding the ownership or beneficial in the issuer or the offer or sale, and the amount and nature of the offer or sale, and is provided with a statement under oath that the requirements of this section have been met; and
- (d) the offeree or purchaser has signed a disclosure notice, the text of which is set forth in the new section.

The bill would provide that the signed disclosure form shall be maintained by the offeror or seller and, in the case of a purchaser who does not certify a net worth of at least \$250,000, a copy shall be filed with the Department of Banking

and Finance.

The bill would provide for administrative remedies for violations of this section.

Explanation of amendments:

The committee amendments would revise and restructure the proposed transactional exemption. The bill, as introduced, would insert a new section in the Securities Act of Nebraska. The committee amendments, instead, would insert relevant provisions in three existing sections of the act.

The committee amendments would amend section 8-1111 to provide an exemption from registration for a transaction in this state by a Nebraska issuer selling solely to Nebraska residents when:

- (a) the proceeds in any two-year period do not exceed \$250,000 and at least 80 percent of the proceeds are used in Nebraska;
- (b) no commission is paid except to a registered agent of a registered broker-dealer;
- (c) the issuer or a connected individual has not engaged in state or federal securities law violation;
- (d) the issuer files a notice with required information with the Director of Banking and Finance;
- (e) the offeree receives a disclosure statement with required information;
- (f) the purchaser signs a subscription agreement with required information; and
- (g) the issuer files a statement with required information with the director.

The committee amendments would amend section 8-1108.01 which currently allows the Director of Banking and Finance to impose a fine of up to \$25,000 for a securities law violation. The committee amendments would provide that, in connection with a transaction that would be exempted from registration by this bill, no fine shall be imposed for any statement of a material fact made or for an omission of a material fact required to be stated or necessary to make the statement made not misleading unless such statement or omission was made with the intent to defraud or mislead.

The committee amendments would amend section 8-1118 which provides that a person who sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in light of the circumstances under which they are made not misleading may be liable to a buyer in a civil action to recover the consideration, interest, and attorneys fees. The committee amendments would provide that, in connection with a transaction that would be exempted from registration by this bill, no person shall be liable for any statement of a material fact made or for an omission of a material fact required to be stated or necessary to make the statement made not misleading unless such statement or omission was made with the intent to defraud or mislead, with the burden of proof on the claimant.

Mike Gloor, Chairperson